IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Cr.Appeal 250 of 2000
Decided on 13.7.2007

State of H P .....Appellant

Versus

Shyam Lal ..... Respondent

Coram:

The Hon'ble Mr. Justice Surinder Singh.J.

Whether approved for reporting ?[1]
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For the appellant **Mr. M A Khan, Deputy Advocate General.**

For the Respondent **Mr. G D Verma, Senior Advocate, assisted by Mr Romesh Verma, Advocate.**

Surinder Singh, J.(oral)

The respondent was put on trial, for an offence punishable under Section 16 of the Land Preservation Act, 1978, (hereinafter to be called as "the act"), in a Police challan No.23-2 of 1997 in the court of Judicial Magistrate Ist Class, Court No.2, Rohru, District Shimla. Vide its detailed judgment, the respondent was acquitted on 9.7.1999.

The State felt aggrieved and dissatisfied with the judgment of acquittal, filed the instant appeal, on the grounds that the trial court had

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment ? yes.***

discarded the testimony of the prosecution witnesses on untenable grounds and further that most reliable evidence of the prosecution was brushed aside without cogent reasons.

Leave to appeal was granted by this Court on 10th May,2000. Now the matter has been finally heard.

Shri M A Khan, learned Deputy Advocate General, has forcibly argued that the evidence of the prosecution was not appreciated by the trial court in its right perspective, which has resulted into miscarriage of justice. Since there are grounds to convert the impugned judgment of acquittal into conviction, the appeal deserves to be allowed.

Contra, Sh.G.D.Verma, learned Senior Advocate, duly instructed by Shri Romesh Verma, Advocate, while supporting the impugned judgment has pointed out from the evidence that the view taken by the trial court is quite reasonable and plausible, therefore, the appeal merits dismissal.

I have given my thoughtful consideration to the rival contentions raised by the learned counsel for the parties and have reappraised the evidence on record.

In brief, the prosecution story is:

that the police party, headed by the Inspector Tarsem Lal, was on patrolling duty, during the day time on 17.1.1997 near village ***Tandali,*** where they received a secret information that respondent Shyam Lal had illicitly felled few trees and converted them into the scants and the case property was lying concealed in his house. If the house is raided, a good quantity can be unearthed.

On this, a *rukka* was sent for registration of a case, on the basis of which FIR No.22/97 Ex.PW-8/B was registered.

A raiding party was formed by joining Parkash Chand (PW-2) and Keshav Ram (not examined) as independent witnesses. During the search, the police recovered 74 scants of timber, which were hammer marked and took into possession vide memo Ex.PW-1/A and gave on supardari to Dharam Singh vide memo Ex.PW-1/B. Police prepared the site plan Ex.PW-8/C and also obtained the notification dated 27.8.80 Ex.PW-5/A. They recorded statements of the witnesses, under Section 161 Cr.P.C. After completing the challan, it was presented before the court only under Section 16 of the Act for trial.

The trial court, after hearing the learned counsel for the parties, put notice of accusation to the accused-respondent only under Section 16 of the Land Preservation Act, to which the accused-respondent pleaded not guilty and claimed trial.

To prove the case, the prosecution examined Nesru Ram (PW-1), Parkash Chand (PW-2), Mohan Lal (PW-3), HC Jagdish Chand (PW-4), Raj Kumar (PW-5), Dharam Singh (PW-6), Gian Singh (PW-7) and Inspector Tarsem Lal (PW-8).

The respondent was also examined, under Section 313 CrP.C.

According to the respondent, case was planted against him on account of enmity with one Sh. Mast Ram (a retired Police official) with whom he had a boundary dispute. Further according to him, he had cut the trees from his own land within the permissible limit. However, no defence was led.

The trial court after hearing the parties and on going through the evidence on record held that there was not even an iota of evidence on record to show that there has been breach of any regulation, restriction or prohibition imposed, order passed or requisition made under Sections 4,5,6 or 9 or any obstruction or resistance in any

manner made in any way of execution of acts or things done under Section 10 as contemplated in Section 16 of the Act. The prosecution only led evidence with respect to the recovery of scants, by examining PWs 1 to 4, but there was nothing on record to show that any breach of such regulation(s) was/were ever made to bring home the guilt of the respondent-accused, under Section 16 of the aforesaid Act.

PW-5 Raj Kumar (Camp Clerk from the office of DFO Rohru) has proved the notifications Ex.PW-5/A to Ex.PW-5/D. In the cross-examination the witness admitted that a person can cut three trees in a year from his own land for the construction of the house etc. without obtaining any permission/sanction.

PW-6 Dharam Singh (Forest Guard) has admitted that the respondent-accused had disclosed to the Forest as well as police officials that he had cut the tress from his own land in a span of 8-10 years. Parkash Chand (PW-2) has admitted that the respondent had cut trees in a span of 8-10 years from his own land by taking 2-3 trees in a year.

From the Notification Ex.PW-5/D dated 2nd September, 1981, no infraction was proved that the respondent had cut more than three trees in a year.

PW-3 Mohan Lal has also stated that the seized timber was old, which seems to have been cut within a span of 1-8 year, for the construction of the house by the respondent.

On account of these cumulative circumstances, the trial court came to the conclusion that the prosecution has failed to prove the ingredients of the offence charged against the respondent whereas the other evidence led towards the guilt of the respondent-accused did not inspire confidence.

I have carefully scanned the evidence on record but could not find anything worth interference with the conclusion arrived at by the trial court for acquitting the respondent which could render the impugned judgment perverse. Accordingly the appeal is dismissed. The respondent is discharged of the bail bonds, entered upon by him, during the trial, at any stage.

July 13, 2007 (Surinder Singh),J.
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